CHARITIES—BEQUESTS FOR MASSES CHARITABLE.—A will contained several bequests to priests for masses to be said by them in their churches for the repose of the soul of the testator and certain relatives. The residue of the estate was left to a Catholic archbishop in Dublin, Ireland, with a request that priests in designated churches in his jurisdiction be procured to say masses for the soul of the testator and designated relatives. *Held*, the gifts to the priests are not trusts but are valid as direct gifts to the donees. The residuary legacy is a charitable trust within the meaning of the California Civil Code limiting gifts of that character by will. *In re Hamilton's Estate* (Cal., 1920), 186 Pac. 587.

In England, until recently, a trust for the saying of masses was considered as a superstitious use which was illegal and void. *Re Egan* [1918], 2 Ch. 350; *Re Blundell's Trusts*, 30 Beav. 365; *Atty. Gen.* v. *Fishmonger's Co.*, 2 Beav. 151. But see *Bourne* v. *Keane* [1919], A. C. 815, overruling these cases. See 18 MICH. L. REV. 558. In Ireland trusts for the saying of masses have been held valid as to immediate masses, but not charitable and invalid if creating a perpetuity. *Reichenbach* v. *Quin*, 21 L. R. Ir. 138; *Kehoe* v. *Wilson*, 7 L. R. Ir. 10; *Morrow* v. *M'Conville*, Ir. L. R. 11 Eq. 326. But see *O'Hanlon* v. *Logue* [1906], 1 L. R. 247 (masses to be said in public). In this country, by what is probably the weight of authority, bequests for masses are held valid, but on varying grounds. In one class of cases they are upheld as charitable. *Ackerman* v. *Fichter*, 179 Ind. 392 (all poor souls); *Hoeffler* v. *Clogan*, 171 Ill. 462; *Schouler, Petitioner*, 134 Mass. 426; *Rhymer's Appeal*, 93 Pa. 142 (called a religious use). In other cases they are upheld as private trusts or construed as gifts to the donees. *Harrison* v. *Brophy*, 59 Kan. 1; *Moran* v. *Moran*, 104 Ia. 216 (said not to be a trust but a valid gift); *Sherman* v. *Baker*, 20 R. I. 446; *Re Lennon's Estate*, 152 Cal. 327. Courts which deny the validity of such bequests generally regard them as private trusts which are void for lack of a beneficiary. *Festorazzi* v. *St. Joseph's Catholic Church*, 104 Ala. 327; *McHugh* v. *McCole*, 97 Wis. 166; *Holland* v. *Alcock*, 108 N. Y. 312 (abrogated by statute in 1893; see *Matter of Morris*, 227 N. Y. 141.) In other courts they are regarded as not charitable and invalid if creating a perpetuity. See Irish cases, *supra; Re Zeagman*, 37 Ont. L. Rep. 536. The instant case is interesting because in effect it overrules *Re Lennon's Estate, supra*, where it was distinctly held that a bequest for masses was not charitable. The case illustrates two types of bequests for masses which are given effect on different theories, viz., as a direct gift to the named beneficiary, and as a charitable trust. The opinion contains an interesting discussion of the nature and purposes of the mass according to the doctrine of the Roman Catholic Church, upon which the court bases its conclusion that a bequest for such purposes is charitable. See further, 14 Ann. Cases 1025; 65 Am. St. Rep. 119; 40 L. R. A. 717; SCOTT'S CASES ON TRUSTS, p. 283, note.

CONSTITUTIONAL LAW—INCOME TAX ON SALARIES OF FEDERAL JUDGES.—The provision of Income Tax Act, Sec. 213, in requiring salaries generally to be included in gross income returns, specifies salaries of federal judges

shall likewise be taxed. Plaintiff, United States District Judge, paid income tax on his judicial salary, under protest, and sued deputy collector for return of the tax. United States Constitution, Art. 3, Sec. 1, provides compensation of judges of Supreme and inferior courts "shall not be diminished during their continuance in office." *Held*, such tax does not violate this constitutional provision. *Evans* v. *Gore* (D. C., W. D. Ky., 1919), 262 Fed. 550.

This case presents a very novel question, which seems to be correctly decided, although there is apparently no decision directly in point. Clearly this is a general tax on incomes, including the judicial salary, and is not directed against salaries as such. It merely incidentally falls on salaries, and so is no diminution within the meaning of the constitutional provision. The constitutional provision does not exempt federal judges generally from taxation, and each must bear his share of that burden which the United States sees fit to impose upon its citizens for its maintenance. To support this decision we have only to realize that the purpose and practical effect of the constitutional provision is conserved,—the absolute independence of the judiciary from the legislative branch of the government is not impaired, inasmuch as the amount of compensation received by the judges, in the first instance, is not diminished by the legislature. This tax, being generally on all incomes, is not such a diminution of judges' salaries as to bring the judiciary within reach of the legislative department, nor would it cause any suspicion of influence that might tend to shape or warp their decisions. The amount of income received, in the form of judicial salary, remains the same throughout, even though part of this income must later be paid back to the government in the form of taxes. The judge's claim for salary remains unimpaired, and he receives a salary the same in amount as prior to this tax, inasmuch as the amount of the tax is not deducted from the salary before it is paid to the judge. The government's claim for taxes, against all citizens alike, cannot be resisted, in the absence of exemption, even by federal judges. This tax does not render the judiciary subservient to another branch of the government, but merely to the government itself, which, in its supreme exercise of sovereignty, has the right to subject all its citizens to like and equal burdens, duties, and taxes. See contrary view, 13 OPIN. ATTY. GEN. 161, and BLACK, TREATISE ON FEDERAL TAXES, Sec. 16, which seems to carry little weight since the adoption of the Sixteenth Amendment to the Constitution providing "Congress shall have power to lay and collect taxes on incomes, from whatever source derived."

CONSTITUTIONAL LAW—REFERENDUM AS TO AMENDMENTS OF FEDERAL CONSTITUTION.—In November, 1918, the people of Ohio adopted an amendment to the state constitution providing that "The people also reserve to themselves the legislative power of the referendum on the action of the General Assembly ratifying any proposed amendment to the Constitution of the United States." The legislature of Ohio having voted approval of the proposed Eighteenth (Prohibition) Amendment, a petition for referendum was filed with the secretary of state. Plaintiff thereupon filed a petition for injunction to restrain the defendant, the secretary of state, from spend-